

ASSEMBLY BILL

No. 868

Introduced by Assembly Member Ammiano

February 21, 2013

An act to amend Section 68553 of the Government Code, and to amend Sections 102 and 317 of the Welfare and Institutions Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 868, as introduced, Ammiano. Courts: training programs: gender identity and sexual orientation.

(1) Existing law requires the Judicial Council to perform various duties designed to assist the judiciary, including establishing judicial training programs for judges, referees, commissioners, mediators, and others who perform duties in family law matters. Existing law requires this training to include instruction in all aspects of family law, including the effects of gender on family law proceedings.

This bill would require that training to also include the effects of gender identity and sexual orientation on family law proceedings.

(2) Existing law establishes the jurisdiction of the juvenile court, which is authorized to adjudicate certain children to be dependents of the court under certain circumstances, and prescribes various hearings and other procedures for these purposes. Existing law requires a court to appoint counsel for a child who is not represented by counsel in these dependency proceedings, except as specified. Under existing law, appointed counsel is required to have a caseload and training that ensures adequate representation, and Judicial Council is required to promulgate rules of court that establish caseload standards, training requirements, and guidelines for counsel.

This bill would require that training to also include instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth.

(3) Existing law requires the Judicial Council to establish a planning and advisory group to recommend on the development of program guidelines and funding procedures for court-appointed special advocates (CASAs) and to establish a request-for-proposal process to establish, maintain, or expand local CASA programs, pursuant to which volunteer CASAs provide designated services and support to children under the jurisdiction of the juvenile court. The council is required to, among other things, require an initial and ongoing training program to all persons acting as a CASA that covers various topics, including, but not limited to, child development.

This bill would require that training to also include cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender (LGBT) youth.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 68553 of the Government Code is
2 amended to read:

3 68553. (a) The Judicial Council shall establish judicial training
4 programs for judges, referees, commissioners, mediators, and
5 others ~~as who are~~ deemed appropriate who perform duties in family
6 law matters.

7 ~~The~~

8 (b) *The* training shall include a family law session in any
9 orientation session conducted for newly appointed or elected judges
10 and an annual training session in family law.

11 ~~The~~

12 (c) *The* training shall include instruction in all aspects of family
13 law, including effects of ~~gender~~ *gender, gender identity, and sexual*
14 *orientation* on family law proceedings, the economic effects of
15 dissolution on the involved parties, and, on and after July 1, 1994,
16 the effects of allegations of child abuse or neglect made during
17 family law proceedings.

18 SEC. 2. Section 102 of the Welfare and Institutions Code is
19 amended to read:

1 102. (a) Each CASA program shall, if feasible, be staffed by
2 a minimum of one paid administrator. The staff shall be directly
3 accountable to the presiding juvenile court judge and the CASA
4 program board of directors, as applicable.

5 (b) The program shall provide for volunteers to serve as CASAs.
6 A CASA may be appointed in juvenile dependency proceedings
7 under Section 300, including proceedings involving a nonminor
8 dependent.

9 (c) Each CASA shall serve at the pleasure of the court having
10 jurisdiction over the proceedings in which a CASA has been
11 appointed and that appointment may continue after the child attains
12 his or her age of majority, with the consent of the nonminor
13 dependent. A CASA shall do all of the following:

14 (1) Provide independent, factual information to the court
15 regarding the cases to which he or she is appointed.

16 (2) Represent the best interests of the ~~children~~ *child* involved,
17 and consider the best interests of the family, in the cases to which
18 he or she is appointed.

19 (3) At the request of the judge, monitor cases to which he or
20 she has been appointed to ~~assure~~ *ensure* that the court's orders
21 have been fulfilled.

22 (d) The Judicial Council, through its rules and regulations, shall
23 require an initial and ongoing training program consistent with
24 this chapter to all persons acting as a CASA, including, but not
25 limited to, each of the following:

26 (1) Dynamics of child abuse and neglect.

27 (2) Court structure, including juvenile court laws regarding
28 dependency.

29 (3) Social service systems.

30 (4) Child development.

31 (5) *Cultural competency and sensitivity relating to, and best*
32 *practices for, providing adequate care to lesbian, gay, bisexual,*
33 *and transgender youth.*

34 ~~(5)~~

35 (6) Interviewing techniques.

36 ~~(6)~~

37 (7) Report writing.

38 ~~(7)~~

39 (8) Roles and responsibilities of a CASA.

40 ~~(8)~~

1 (9) Rules of evidence and discovery procedures.

2 ~~(9)~~

3 (10) Problems associated with verifying reports.

4 (e) The Judicial Council, through its CASA Advisory
5 Committee, shall adopt guidelines for the screening of CASA
6 volunteers, which shall include personal interviews, reference
7 checks, checks for records of sex offenses and other criminal
8 records, information from the Department of Motor Vehicles, and
9 other information ~~as~~ *that* the Judicial Council deems appropriate.

10 SEC. 3. Section 317 of the Welfare and Institutions Code is
11 amended to read:

12 317. (a) (1) When it appears to the court that a parent or
13 guardian of the child desires counsel but is presently financially
14 unable to afford and cannot for that reason employ counsel, the
15 court may appoint counsel as provided in this section.

16 (2) When it appears to the court that a parent or Indian custodian
17 in an Indian child custody proceeding desires counsel but is
18 presently unable to afford and cannot for that reason employ
19 counsel, the provisions of Section 1912(b) of Title 25 of the United
20 States Code and Section 23.13 of Title 25 of the Code of Federal
21 Regulations shall apply.

22 (b) When it appears to the court that a parent or guardian of the
23 child is presently financially unable to afford and cannot for that
24 reason employ counsel, and the child has been placed in
25 out-of-home care, or the petitioning agency is recommending that
26 the child be placed in out-of-home care, the court shall appoint
27 counsel for the parent or guardian, unless the court finds that the
28 parent or guardian has made a knowing and intelligent waiver of
29 counsel as provided in this section.

30 (c) If a child or nonminor dependent is not represented by
31 counsel, the court shall appoint counsel for the child or nonminor
32 dependent, unless the court finds that the child or nonminor
33 dependent would not benefit from the appointment of counsel. The
34 court shall state on the record its reasons for that finding. A primary
35 responsibility of counsel appointed to represent a child or nonminor
36 dependent pursuant to this section shall be to advocate for the
37 protection, safety, and physical and emotional well-being of the
38 child or nonminor dependent. Counsel may be a district attorney,
39 public defender, or other member of the bar, provided that he or
40 she does not represent another party or county agency whose

1 interests conflict with the child's or nonminor dependent's interests.
2 The fact that the district attorney represents the child or nonminor
3 dependent in a proceeding pursuant to Section 300 as well as
4 conducts a criminal investigation or files a criminal complaint or
5 information arising from the same or reasonably related set of facts
6 as the proceeding pursuant to Section 300 is not in and of itself a
7 conflict of interest. The court may fix the compensation for the
8 services of appointed counsel. The appointed counsel shall have
9 a caseload and training that ensures adequate representation of the
10 child or nonminor dependent. The Judicial Council shall
11 promulgate rules of court that establish caseload standards, training
12 requirements, and guidelines for appointed counsel for children
13 and shall adopt rules as required by Section 326.5 no later than
14 July 1, 2001. *On and after January 1, 2014, those training*
15 *requirements shall include instruction on cultural competency and*
16 *sensitivity relating to, and best practices for, providing adequate*
17 *care to lesbian, gay, bisexual, and transgender youth in*
18 *out-of-home care.*

19 (d) Counsel shall represent the parent, guardian, child, or
20 nonminor dependent at the detention hearing and at all subsequent
21 proceedings before the juvenile court. Counsel shall continue to
22 represent the parent, guardian, child, or nonminor dependent unless
23 relieved by the court upon the substitution of other counsel or for
24 cause. The representation shall include representing the parent,
25 guardian, or the child in termination proceedings and in those
26 proceedings relating to the institution or setting aside of a legal
27 guardianship. On and after January 1, 2012, in the case of a
28 nonminor dependent, as described in subdivision (v) of Section
29 11400, no representation by counsel shall be provided for a parent,
30 unless the parent is receiving court-ordered family reunification
31 services.

32 (e) (1) Counsel shall be charged in general with the
33 representation of the child's interests. To that end, counsel shall
34 make or cause to have made any further investigations that he or
35 she deems in good faith to be reasonably necessary to ascertain
36 the facts, including the interviewing of witnesses, and shall
37 examine and cross-examine witnesses in both the adjudicatory and
38 dispositional hearings. Counsel may also introduce and examine
39 his or her own witnesses, make recommendations to the court
40 concerning the child's welfare, and participate further in the

1 proceedings to the degree necessary to adequately represent the
2 child. When counsel is appointed to represent a nonminor
3 dependent, counsel is charged with representing the wishes of the
4 nonminor dependent except when advocating for those wishes
5 conflicts with the protection or safety of the nonminor dependent.
6 If the court finds that a nonminor dependent is not competent to
7 direct counsel, the court shall appoint a guardian ad litem for the
8 nonminor dependent.

9 (2) If the child is four years of age or older, counsel shall
10 interview the child to determine the child's wishes and assess the
11 child's well-being, and shall advise the court of the child's wishes.
12 Counsel shall not advocate for the return of the child if, to the best
13 of his or her knowledge, return of the child conflicts with the
14 protection and safety of the child.

15 (3) Counsel shall investigate the interests of the child beyond
16 the scope of the juvenile proceeding, and report to the court other
17 interests of the child that may need to be protected by the institution
18 of other administrative or judicial proceedings. Counsel
19 representing a child in a dependency proceeding is not required to
20 assume the responsibilities of a social worker, and is not expected
21 to provide nonlegal services to the child.

22 (4) (A) At least once every year, if the list of educational
23 liaisons is available on the Internet Web site for the State
24 Department of Education, both of the following shall apply:

25 (i) Counsel shall provide his or her contact information to the
26 educational liaison, as described in subdivision (b) of Section
27 48853.5 of the Education Code, of each local educational agency
28 serving counsel's foster child clients in the county of jurisdiction.

29 (ii) If counsel is part of a firm or organization representing foster
30 children, the firm or organization may provide its contact
31 information in lieu of contact information for the individual
32 counsel. The firm or organization may designate a person or
33 persons within the firm or organization to receive communications
34 from educational liaisons.

35 (B) The child's caregiver or other person holding the right to
36 make educational decisions for the child may provide the contact
37 information of the child's attorney to the child's local educational
38 agency.

39 (C) Counsel for the child and counsel's agent may, but are not
40 required to, disclose to an individual who is being assessed for the

1 possibility of placement pursuant to Section 361.3 the fact that the
2 child is in custody, the alleged reasons that the child is in custody,
3 and the projected likely date for the child's return home, placement
4 for adoption, or legal guardianship. Nothing in this paragraph shall
5 be construed to prohibit counsel from making other disclosures
6 pursuant to this subdivision, as appropriate.

7 (5) Nothing in this subdivision shall be construed to permit
8 counsel to violate a child's attorney-client privilege.

9 (6) The changes made to this subdivision during the 2011–12
10 Regular Session of the Legislature by the act adding subparagraph
11 (C) of paragraph (4) and paragraph (5) are declaratory of existing
12 law.

13 (7) The court shall take whatever appropriate action is necessary
14 to fully protect the interests of the child.

15 (f) Either the child or counsel for the child, with the informed
16 consent of the child if the child is found by the court to be of
17 sufficient age and maturity to consent, which shall be presumed,
18 subject to rebuttal by clear and convincing evidence, if the child
19 is over 12 years of age, may invoke the psychotherapist-client
20 privilege, physician-patient privilege, and clergyman-penitent
21 privilege. If the child invokes the privilege, counsel may not waive
22 it, but if counsel invokes the privilege, the child may waive it.
23 Counsel shall be the holder of these privileges if the child is found
24 by the court not to be of sufficient age and maturity to consent.
25 For the sole purpose of fulfilling his or her obligation to provide
26 legal representation of the child, counsel shall have access to all
27 records with regard to the child maintained by a health care facility,
28 as defined in Section 1545 of the Penal Code, health care providers,
29 as defined in Section 6146 of the Business and Professions Code,
30 a physician and surgeon or other health practitioner, as defined in
31 former Section 11165.8 of the Penal Code, as that section read on
32 January 1, 2000, or a child care custodian, as defined in former
33 Section 11165.7 of the Penal Code, as that section read on January
34 1, 2000. Notwithstanding any other law, counsel shall be given
35 access to all records relevant to the case that are maintained by
36 state or local public agencies. All information requested from a
37 child protective agency regarding a child who is in protective
38 custody, or from a child's guardian ad litem, shall be provided to
39 the child's counsel within 30 days of the request.

1 (g) In a county of the third class, if counsel is to be provided to
2 a child at the county's expense other than by counsel for the
3 agency, the court shall first use the services of the public defender
4 before appointing private counsel. Nothing in this subdivision shall
5 be construed to require the appointment of the public defender in
6 any case in which the public defender has a conflict of interest. In
7 the interest of justice, a court may depart from that portion of the
8 procedure requiring appointment of the public defender after
9 making a finding of good cause and stating the reasons therefor
10 on the record.

11 (h) In a county of the third class, if counsel is to be appointed
12 to provide legal counsel for a parent or guardian at the county's
13 expense, the court shall first use the services of the alternate public
14 defender before appointing private counsel. Nothing in this
15 subdivision shall be construed to require the appointment of the
16 alternate public defender in any case in which the public defender
17 has a conflict of interest. In the interest of justice, a court may
18 depart from that portion of the procedure requiring appointment
19 of the alternate public defender after making a finding of good
20 cause and stating the reasons therefor on the record.